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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

STROTHER P. WALTON,
RALPH ROBINSON,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

Petition

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Anthony Joseph respectfully submits to this Honorable Court the following:

A

Statement of Matter Involved

An information was filed against petitioner in the District Court of the United States for the Southern District of California, Northern Division, on June 31, 1943. The in-

formation contained two counts. Each count charged petitioner with a violation of the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C., 331(a)). Each count charged petitioner with unlawfully delivering into interstate commerce a consignment of food within the meaning of said Act and charged that said food, when delivered for introduction into interstate commerce, was adulterated within the meaning of said Act, in that it consisted, in whole or part, of a filthy substance (R. 3-7).

The defendant pleaded not guilty to each count. A jury trial was had on the 9th day of November, 1943, and the defendant was found guilty on both counts (R. 18). A motion for a new trial was made and denied (R. 27). An appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and the judgment affirmed (R. 53).

Three days before the trial, on November 6, 1943, a stipulation was entered into by H. A. Savage, the attorney representing the defendant at that time, and the Assistant United States Attorney, representing the government, wherein it was stipulated, among other things, that the product which the defendant introduced into interstate commerce was a food (R. 8-15).

Three days later and on the day of the trial, H. A. Savage moved the substitution of Strother P. Walton and Ralph Robinson as attorneys for the defendant in lieu of himself and G. L. Aynesworth, which motion was granted, Walton and Robinson being present in Court, and who then proceeded to act as counsel for the petitioner (R. 43).

Immediately following the substitution, and prior to the commencement of the trial, a motion was made by the petitioner in open Court to be relieved of those portions of the stipulation wherein it was admitted in connection with both counts of the information that the prune concentrate juice,

which was the product shipped by the petitioner into interstate commerce, was a food. This request was made to the Court by defendant's counsel, who stated that the consignee at Hartford, Connecticut, did not use the prune concentrate juice in the form in which it was shipped and, therefore, it could not be classified as a food. (R. 44).

Defense counsel also stated that this product was shipped to a beverage manufacturer to be later reprocessed and eventually made into a finished food product by the consignee (R. 45).

Defense counsel further contended that the stipulation was entered into by the petitioner here, through the attorneys who were then representing him, for the sole purpose of saving the expense to the government of bringing from New York and Connecticut several government chemists who had analyzed one of the shipments at those locations, and it was never the petitioner's understanding that he was admitting that the product was a finished food suitable for human consumption.

The government's attorneys objected to the request of the petitioner, and at the conclusion of the argument of the parties, the Court denied the motion of the petitioner (R. 46).

Thereupon the matter proceeded to trial before a jury and the only evidence offered by the government to prove that the product which was shipped by the petitioner into interstate commerce was a food, was the stipulation referred to (R. 46).

Motion for a new trial was made after the jury's verdict of guilty. Upon the motion for a new trial, the petitioner again urged the error of the District Court in failing to relieve him of the portions of the stipulation which admitted the product was a food, and his affidavit in support of the motion set forth that the raw material from which

the product was made consisted of off-grade prunes, purchased by him from the United States Department of Agriculture, and that the said prunes were purchased with the understanding that they were to be made into by-products, and that the said culled prunes were treated by the petitioner in a series of processes, which reduced them to a heavy syrupy substance of about the consistency of molasses (R. 22-23).

That the product was then consigned to Stoddard Bros., of Hartford, Connecticut, who, upon receiving same, would subject the product to a number of pasteurizing and filtering and other manufacturing processes; that the product, in the form as shipped by the petitioner, was never sold or dispensed as a food or beverage (R. 23-24).

That the product when it arrived in Hartford, Connecticut, was ultimately sold for distillation purposes, and never was used as a food (R. 24).

The petitioner further stated in his affidavit that his understanding of the stipulation was that the same was entered into to avoid the necessity of bringing government witnesses from Connecticut, and that he had no intention of stipulating that the product which he shipped into interstate commerce was a food within the meaning of the Federal Food, Drug, and Cosmetic Act, and that he did not know that said stipulation would be so construed (R. 22).

At the argument on motion for new trial there was received in evidence two defendant's exhibits, the same being one bottle containing a sample of the product shipped by the defendant and the other bottle being a finished prune juice, admittedly a food, which was furnished to the Court to show the lack of similarity to a food of the product shipped by the defendant.

The motion for new trial was denied, and the appeal to the Circuit Court followed.

Upon the appeal in the Circuit Court the petitioner again urged the error of the trial Court in refusing to relieve him of that portion of the stipulation which admitted the product was a food.

B

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, section 347).

C

Questions Presented

The first question presented is whether or not the trial Court abused its discretion and violated the personal rights of the defendant and petitioner herein in refusing to relieve him of that portion of the stipulation which forced him to go to trial admitting the corpus of the offense, to-wit, that the product which he had introduced into interstate commerce was a food.

The second question involved is whether a defendant can be convicted of a criminal offense, where the corpus delicti of the same was proven by the uncorroborated stipulation of the defendant that the product which he shipped into interstate commerce was a food; no other evidence that the product was a food being offered by the government.

D

Reasons for Allowance of the Writ

The District Court has decided a substantial question of federal law of general importance, and the Circuit

Court affirmed the same, which has not been, but should be, settled by this Court.

There is here presented to this Court for the first time the question of whether or not a defendant in a criminal action can be convicted where the only evidence of the corpus delicti of the crime charged, was established by a stipulation entered into by the defendant's attorney with the attorneys for the prosecution; the defendant's attorneys who entered into the stipulation having been discharged before the trial and other attorneys substituted.

WHEREFORE, petitioner prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, and that said judgment be reversed, and that petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Respectfully submitted,

STROTHER P. WALTON,
RALPH ROBINSON,
Attorneys for Petitioner,
Pacific Southwest Building,
Fresno, California.

September 16, 1944.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

No opinion has been reported and petitioner has been advised that none will be written in this matter. The judgment of the District Court was ordered affirmed (R. 52).

II

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, section 347).

III

Statement of the Case

A full statement of the case has been given under the heading "A" of the Petition (pp. 1-5 herein), and is incorporated here by reference.

IV

Specification of Errors

1. Error of the District Court in denying petitioner's motion to be relieved of those portions of the stipulation entered into prior to the trial, and without his understanding, which contained admissions that the product, which he was charged to have shipped into interstate commerce, was a food, within the meaning of the Pure Food, Drug, and Cosmetic Act, when in fact the product was not a food.

2. Error of the District Court in denying this petitioner's motion for a new trial, for the same reasons.

3. Error of the Circuit Court in affirming the actions of the District Court, as set forth in 1 and 2 above.

V

Question Presented

The sole question presented is whether or not a defendant in a criminal action can be convicted of a crime, where the only evidence of the corpus-delicti of the crime charged, was established by a stipulation entered into by the defendant's attorney, with the attorneys for the prosecution; the defendant's attorney who entered into the stipulation having been discharged before the trial and other attorneys substituted.

VI

Statutory Provisions Involved

The only statute involved is the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large 1040; 21 U. S. C. 331 (a)), which makes it unlawful to introduce into interstate commerce a food which has been adulterated by consisting of in part a filthy substance.

VII

Summary of Argument

It is the petitioner's position that the prosecution must prove the corpus-delicti of the crime, which we believe is the proposition that the product shipped was a food, by other evidence than the admission of the defendant, made by a stipulation, which was the only evidence offered to prove this fact.

VIII

Argument

We believe the Court, the U. S. Attorneys and ourselves are agreed on the well-established rule that the corpus-delicti of a crime cannot be established by the defendant's admissions and confessions. *Ryan* v. *U. S.*, 99 Fed. (2) 864; *Pines* v. *U. S.*, 123 Fed. (2) 829, and *Anderson* v. *U. S.*, 124 Fed. (2) 58, and many other cases all adhere to this rule, and require other evidence to establish the corpus-delicti, than just the admissions or confessions of the defendant.

These cases were cited to the District Court and also to the Circuit Court; the District Court held that Stipulations were not confessions or admissions, and the Circuit Court, by their affirmance of the District Court's ruling, have held to the same effect.

There are no cases which we have been able to find where this point has been determined.

In *Benz* v. *Celeste Fur Corp.*, 136 Fed. (2) 845 at 848, the Court says in effect that a stipulation cannot serve to dispense with proof needed to bring the plaintiffs within the doctrine of the cases they cite.

In *Swift & Co.* v. *Hocking Valley R. Co.*, 243 U. S. 281, Justice Brandeis treated a stipulation used in that case as a nullity, when it was used as an agreement concerning the legal effect of admitted facts, giving as his reason that the Court cannot be controlled by agreement of counsel on a subsidiary question of law. And further that an agreed set of facts cannot be stipulated to for the purpose of reviewing the judgment below.

IX

Conclusion

It is therefore submitted that this case is one in which this Honorable Court should determine the legal effect of a stipulation entered into before the trial, wherein the corpus-delicti of the crime charged was agreed upon, and the defendant convicted on this evidence alone; and that a stipulation should be governed by the same rules as confessions or admissions in criminal cases; that to such an end a writ of certiorari should be granted, and that this Court should review the judgment of the Circuit Court of Appeals for the Ninth Circuit and finally reverse it.

Respectfully submitted,

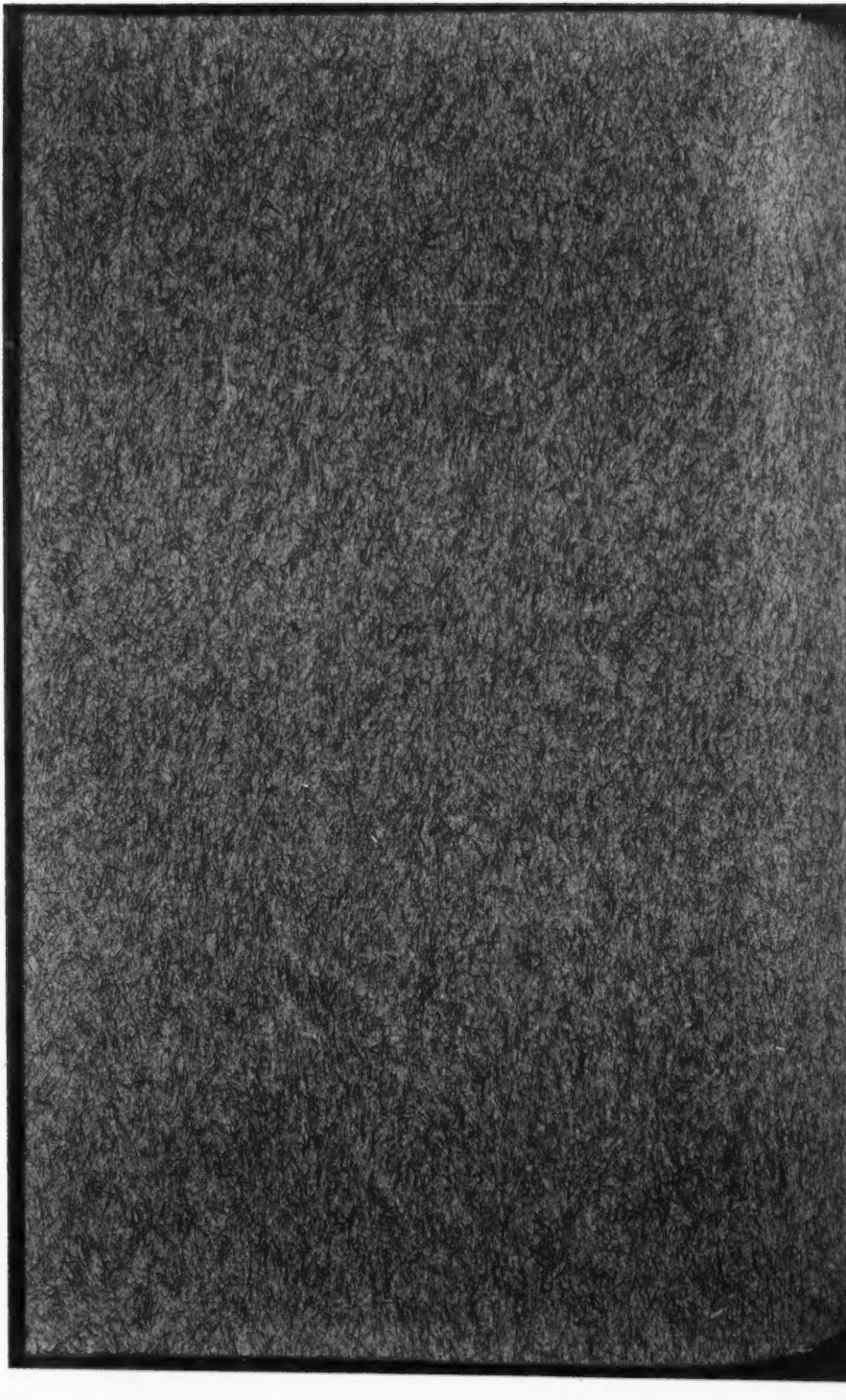
STROTHER P. WALTON,
RALPH ROBINSON,
Attorneys for Petitioner,
Pacific Southwest Building,
Fresno, California.

September 16, 1944.

No. 484

In the Supreme Court of the United States

October Term, 1944



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CITATIONS

Cases:

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Cooper v. *State*, 123 Neb. 605 — 7

Hill v. *Federal Trade Commission*, 124 F. (2d) 104 — 6

Hipolite Egg Co. v. *United States*, 220 U. S. 45 — 7

Jones v. *United States*, 72 F. (2d) 873 — 7

United States v. *52 Drums Maple Syrup*, 110 F. (2d) 914 — 7

Warszower v. *United States*, 312 U. S. 342 — 6

Statute:

Secs. 201 (f), 301 (a), and 402 (a) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U. S. C. 321 (f), 331 (a), 342 (a)) — 2, 7

Miscellaneous:

Proposed Rules of Criminal Procedure, Rule 15 — 6

Wigmore on *Evidence*, 3rd Ed., sec. 2588 — 6

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 57–59) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered August 15, 1944 (R. 53). The petition for a writ of certiorari was filed September 20, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a stipulation between petitioners' attorneys and Government counsel filed before trial, admitting a fact which constitutes an element of the offense, is an extra-judicial confession requiring corroboration.

STATUTE INVOLVED

Sections 201 (f), 301 (a), and 402 (a) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U. S. C. 321 (f), 331 (a), 342 (a), provide in part:

> SEC. 201 (f). The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.
>
> SEC. 301. The following acts and the causing thereof are hereby prohibited:
>
> (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.
>
> SEC. 402. A food shall be deemed to be adulterated * * * (a) * * * (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; * * *

STATEMENT

In June, 1943, in the United States District Court for the Southern District of California, the United States Attorney, with leave of the court, filed an information in two counts, each charging a violation of the Federal Food, Drug, and Cosmetic Act in that, on separate occasions, petitioner had unlawfully introduced and delivered for introduction in interstate commerce a consignment of food labeled as Prune Concentrate Juice which was adulterated in that it consisted in whole or in part of a filthy substance and had been prepared under insanitary conditions (R. 3–7). On October 13, 1943, petitioner entered a plea of not guilty to both counts (R. 7–8).

Prior to the trial, on November 2, 1943, the attorneys who then represented petitioner entered into a stipulation with government counsel (R. 8–15) in which it was stipulated, *inter alia,* that on the dates alleged in the information, petitioner had introduced and had delivered for introduction into interstate commerce certain quantities of prune concentrate juice and that such concentrate "was a food within the meaning of the Federal Food, Drug and Cosmetic Act" (R. 9, 11). The stipulation was filed on November 6, 1943 (R. 15). On November 9, the day of the trial, petitioner substituted new attorneys for those who had signed the stipulation (R. 15–16, 43). At the opening of the trial, without prior

notice to the Government, these new attorneys made a motion to have petitioner relieved from that portion of the stipulation which admitted that the prune concentrate juice was a food within the meaning of the statute, stating that the particular shipments charged in the information were manufactured for the purpose of being reprocessed by the consignee into a finished product (R. 44–45). Government counsel opposed the motion, stating that the attorneys who had formerly represented petitioner were fully aware of the nature of the product, having previously inspected petitioner's plant and having represented petitioner at a hearing before the Federal Food and Drug Administration involving the same product; that petitioner had been informed of the contents of the stipulation; that in the event he was relieved therefrom the Government would be obliged to obtain the testimony of the consignee in Hartford, Connecticut, to show his use thereof as a food in the manner advertised by petitioner in a circular which stated that the syrup was a topping for ice cream (R. 44–45). The court denied petitioner's motion and no exception was taken to the court's ruling (R. 46). The admission that the concentrate was a food was called to the attention of the jury by the Government (R. 46). There was no other evidence that the product was a food except that a Government witness testified that the samples of prune concentrate

juice taken from the shipment which was the basis for count 1, consisted of a "heavy, dark brown, sticky, heavy liquid similar to crude molasses, the consistency I believe of heavy molasses" (R. 47), and another Government witness testified that the drums from which these samples were taken "contained a heavy syrupy like, dark juice or syrup" (R. 47).

Petitioner's motion for a directed verdict, at the close of the Government's case, was denied (R. 16) and he was found guilty on both counts (R. 17, 18). A motion for a new trial was denied (R. 18–25, 27, 48–49). Petitioner was sentenced to pay a fine of $250 on the first count and on the second count imposition of sentence was suspended for one year and petitioner was placed on probation for that period (R. 28–29). On appeal, the judgment was affirmed (R. 53).

ARGUMENT

Relying upon the cases which hold that an extra-judicial confession or admission is insufficient to support a conviction without independent corroboration of the corpus delicti, petitioner contends (Pet. 5–6, 8–10) that the evidence is insufficient to support his conviction for the reason that the corpus delicti of the crime, the interstate shipment of food, was proved by the stipulation entered into between his former counsel and the Government. The circuit court of appeals, upon the erroneous assumption that petitioner had failed

to move for a directed verdict, thought that this objection was not open to him, but stated that in any event the stipulation did not require corroboration (R. 58; but see R. 16 and petitioner's supplemental brief in this Court, p. 4). This holding is clearly correct. A stipulation between counsel dispensing with the necessity of proof as to facts is a judicial, not an extra-judicial admission. See *Andrews* v. *St. Louis Joint Stock Land Bank,* 127 F. (2d) 799, 804 (C. C. A. 8), certiorari denied, 309 U. S. 667; Wigmore on *Evidence,* 3d ed. sec. 2588. As this Court explained in *Warszower* v. *United States,* 312 U. S. 342, 347, the rule requiring corroboration of a confession is designed to guard against the danger of untrue confessions. A formal stipulation entered into by counsel has no more of the "inherent weaknesses of confessions or admissions after the fact" than the inconsistent statements prior to the crime involved in the *Warszower* case. Cf. *Hill* v. *Federal Trade Commission,* 124 F. (2d) 104 (C. C. A. 5), where the court stated that "judicial admissions are proof possessing the highest possible probative value." It is interesting to note that Rule 15 of the proposed Rules of Criminal Procedure specifically provides for procedures substantially the same as that followed here. Since a person accused of crime can, without the necessity of corroboration, be convicted upon a plea of guilty which constitutes a judicial admission of all elements of the offense, there is no reason why a

judicial admission of one element of the offense should require corroboration. Cf. *Cooper* v. *State,* 123 Neb. 605 (1932). The stipulation here involved was a formal document entered into by petitioner's then attorneys after full opportunity to acquaint themselves with the facts and was formally filed as a part of the record in this proceeding (see pp. 3–4, *supra*). It clearly is not within the rationale of the rule requiring corroboration of extra-judicial confessions.[1]

---

[1] Petitioner also raises (Pet. 5, 8), but does not argue the question whether it was an abuse of discretion on the part of the trial judge to refuse his application to be relieved from that part of the stipulation which admitted that the product which he shipped was food. Petitioner's attorneys did not, at the trial, object to the judge's ruling, and the circumstances disclosed on the argument of the motion (see pp. 3–4, *supra*) show clearly that there was no abuse of discretion on the part of the trial judge (cf. *Jones* v. *United States*, 72 F. (2d) 873, 874 (C. C. A. 7)). The ground of petitioner's motion was that the particular shipments involved were intended for reprocessing by the consignee (R. 44, 45). Since it is well established that the subsequent use to be made of a product does not change its character as food at the time of the interstate shipment (*Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *United States* v. *52 Drums Maple Syrup*, 110 F. (2d) 914 (C. C. A. 2)), it is evident that petitioner did not present any meritorious ground for his application. By petitioner's own admission in his motion for a new trial the product, even if not used in the form in which it was shipped, would, in the normal course of business, be distributed to the retail trade as a beverage after further processing (R. 22–23). It was therefore, as the stipulation admitted, a food within the meaning of the Food, Drug, and Cosmetic Act, defining food as an "article used for food or drink for man or other animals * * * and articles used for components of any such article" (Sec. 201 (f), p. 2, *supra*).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
Assistant Attorney General.
BEATRICE ROSENBERG,
WILLIAM STRONG,
Attorneys.

NOVEMBER 1944.

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

STROTHER P. WALTON,
RALPH ROBINSON,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion

No opinion was filed at the time the original Petition for Writ of Certiorari and Brief was filed herein, but subsequent thereto and on the 21st day of September, 1944, an opinion was ordered filed in the United States Circuit Court, a copy of the same being printed in this record under the caption "Supplemental Transcript of Record".

II

The Jurisdictional features, the Statement of the Case, Specification of Errors, Question Presented, Statutory Provisions Involved, Summary of Argument and Argument are all covered in the original brief now on file to which reference is hereby made.

III

Additional Question Presented

The only question which has not already been argued is that which appears to be raised in the opinion recently filed,

1. Has the petitioner lost his right to raise the question of error by reason of his failure to reserve an exception to the ruling of the Court?

IV

Argument

The record shows that the stipulation was entered into on November 2d, 1943, between attorneys representing the petitioner and the United States' attorney wherein it was stipulated among other things that the product referred to was a food within the meaning of the Federal Food, Drug and Cosmetic Act (see Pages 9 & 10, Tr. of Record) which stipulation was entered into without the knowledge of the defendant and petitioner herein. (Tr. page 22). A stipulation was also entered into by counsel for the defendant, who subsequently withdrew from the case and the present attorneys being substituted therefor. (Tr. Page 43).

Before the trial commenced a motion was made by the defendant and petitioner in open court to be relieved of those portions of the stipulation previously entered into by former counsel wherein it was admitted in connection with both counts of the information that the prune concentrate juice, which was the product shipped by the defendant into interstate commerce, was a food within the meaning of the Federal Food, Drug and Cosmetic Act, and the matter was thereupon argued before the Court and outside the presence of the jury. (Tr. Page 44).

The Court after considerable argument and discussion denied the motion; no exception being taken by the defendant to the Court's ruling. (Tr. page 46).

The Court is thoroughly familiar with the rule that exceptions are taken and formerly preserved to determinations by the trial court in order that the same may be called to the Court's attention and that the Court have an opportunity to correct its error.

It was apparent to counsel in this case that the Court had definitely made up its mind and had ruled after thoroughly considering the matter, and it would have been a useless act to have required that counsel reserve an exception to the Court's ruling.

It is also well recognized exception to the general rule which requires that exceptions be taken to any ruling of the court which is to be challenged on appeal, and that is in criminal cases involving the life or liberty of the accused, the appellate courts of the United States may notice and correct serious errors in the trial of the accused, fatal to his rights, although these errors are not challenged or reserved by objections, motions, exceptions, or assignments of error. The case at bar is such an action.

Bogileno vs. *U. S.*, 38 F. (2) 584-587;
Van Gorder vs. *U. S.*, 21 F. (2) 939-942;
Lamento vs. *U. S.*, 4 F. (2) 901.

In the opinion filed herein Judge Wilbur states:

> "The appellant argues that there was no evidence on the second count except the stipulation and therefore it cannot be considered as sufficient evidence of the crime without further proof of the corpus delicti. The proper way to raise this question in the lower court would be by motion for a directed verdict. None was made and consequently the question is not before us."

On this point we would like to refer this Honorable Court to the following language which appears on Page 16 of the Transcript:

> "Attorney Robinson moves for a directed verdict of not guilty, states the grounds thereof, and argues. Attorney Walton argues. Attorney Kluckhohn argues in opposition. Attorney Robinson argues further. The motion is denied and an exception noted for the defendant."

V

Conclusion

It is therefore submitted that the question of whether or not the corpus delicti of a crime can be proven solely by a stipulation, or whether the same should be governed by the same rules as confessions and admissions in criminal cases was properly before the United States Circuit Court, who failed to pass upon the same.

And further that it would have been a useless act to have required the defendant to preserve an exception to the ruling of the trial court made prior to the commencement of the trial wherein the said trial court did deny the defendant's motion to be relieved of that portion of the stipulation which admitted that the product shipped into interstate commerce was a food within the meaning of the Federal Food, Drug and Cosmetic Act.

That to such an end the Writ of Certiorari should be granted and that this Court should review the judgment of the Circuit Court of Appeals for the Ninth Circuit and finally reverse it.

Respectfully submitted,

RALPH ROBINSON,
STROTHER P. WALTON,
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Fresno, California.

October 10th, 1944.

(4532)